IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 211 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 211 of 1986
MR JP SHAH for Petitioner No. 1
MR AKIL QURESHI for MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 03/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee, the following questions have been referred to this Court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 by Income Tax Appellate Tribunal, Ahmedbad Bench 'C'.

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the deduction u/s 80P of the I.T. Act 1961 should be allowed only against the total income after set off of unabsorbed business loss, unabsorbed depreciation and unabsorbed development rebate of the earlier years?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in interpretation of application of sec. 35C of the Income-tax Act, 1961?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the entire expenditure of Rs. 9,20,796/- was not eligible for weighted deduction u/s 35C of the I.T. Act?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that only 10% of the expenses incurred on dissemination of information or demonstration of modern technique or method of agriculture, animal husbandry or dairy or poultry farming or advice on such technique or method is eligible for deduction u/s 35C of the Act?

2. Learned advocate Shri J.P. Shah has appeared for the assessee whereas learned advocate Shri Akil Qureshi has appeared for the revenue.

3. At the time of hearing of the reference, the learned advocates have fairly submitted that all the questions, which have been referred to this court, have been answered by different courts during the pendency of this reference.

4. So far as the first question is concerned, it has been submitted that the said question requires to be answered in the affirmative i.e. against the assessee and for the revenue in view of the law laid down by the Supreme Court in case of CIT v. Kotagiri Industrial Co-operative Tea Factory Ltd., 224 ITR 604. We accordingly answer the first question in the affirmative

i.e. against the assessee and in favour of the revenue.

5. So far as questions Nos. 2 to 4 are concerned, it has been submitted by the learned advocates that the said questions have been answered by this court in I.T.R. No. 32/87. In view of the judgment delivered in the said case, we answer all the three questions in the negative i.e. in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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